

Schutz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G.L. Cornell Company

File: B-236930

Date: January 19, 1990

DIGEST

1. The apparent low bid on a contract for a 1-year base period and four 1-year options was properly rejected as materially unbalanced where there is a large price differential between the base and option years, the bid does not become low until the last option year, and the government has indicated it will probably not exercise the options due to funding uncertainty; there thus is reasonable doubt that acceptance of the bid ultimately will result in the lowest overall cost to the government.

2. Where agency initially believed options would be exercised, it properly provided for their evaluation in solicitation, and this determination did not preclude the agency from subsequently determining that funding problems currently make it uncertain whether funds would be available to the agency to permit exercise of the options, and that bid that will not become low unless all options are exercised therefore is materially unbalanced.

DECISION

G.L. Cornell Company (GLC), protests the rejection of its bid as materially unbalanced and award of a contract to Piedmont Tractor Co., Inc., under invitation for bids (IFB) No. F44600-89-B0010, issued by the Department of the Air Force for the lease, with option to purchase, and maintenance of golf course maintenance equipment.

We deny the protest.

The IFB provided for award of a 1-year base lease period with four 1-year options. The IFB incorporated by reference Federal Acquisition Regulation (FAR) clause § 52.217-5, entitled "Evaluation of Options," which advised bidders that the government would evaluate bids on the total price for the base requirement and all options, and that the government may reject a bid as nonresponsive if materially

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unbalanced as to prices for the basic requirement and the option quantities. The IFB also provided elsewhere that award would be made in the aggregate to the responsible and responsive bidder whose price is most advantageous to the government, price and other price related factors considered.

Three bids were received, priced as follows:

	<u>GLC</u>	<u>Piedmont</u>	<u>P&M Supply</u>
Base Year	\$101,295	\$75,060	\$177,938
1st Option	84,414	75,060	177,938
2nd Option	67,530	75,060	177,938
3rd Option	50,646	75,060	177,938
4th Option	33,765	75,060	177,938
Total	\$337,650	\$375,300	\$889,629

(Also, GLC's purchase option prices, called for by the IFB, were the lowest for all 5 years.)

Although GLC's aggregate bid was low, the contracting officer was concerned that the differential between the prices bid for the base and option years violated the prohibition against unbalancing, since GLC's bid did not become the low total bid until the fourth option year. The contracting officer asked GLC to examine its bid for a possible mistake in bid or unbalancing, and GLC confirmed that its bid was correct as submitted. The contracting officer thus advised GLC that since its bid would not be low unless all the options were exercised, and there was a possibility that the Air Force would not exercise the options, he was rejecting the bid as materially unbalanced. He then made award to Piedmont based on its next low aggregate bid.

GLC contends that the Air Force improperly rejected its bid as materially unbalanced. It has offered business reasons for its bid structure, explaining that the higher base-year price accurately reflects its actual cost because the equipment depreciates at a higher rate during the first few years of use. GLC also explains that it set a higher base-year price to compensate for GLC's risk of being unable to find another buyer for the depreciated equipment in the event the options were not exercised. GLC concludes that its prices accurately reflect its costs of leasing or selling the equipment and that its bid therefore should not have been deemed unbalanced.

It is not the practice of our Office to look behind a bid to ascertain the business judgment that went into its preparation. Howell Constr., Inc., B-225766, supra; Crown Laundry and Dry Cleaners, B-208795.2; B-209311, Apr. 22, 1983, 83-1 CPD ¶ 438. Moreover, a firm's business reasons for pricing option years significantly lower than the base and other option years are given little weight where the firm has failed to explain why its bid should be viewed as balanced in the face of the radically different option year pricing patterns evident in the other bids; here, each of the other bidders was able to offer one consistent price for the base year and the options. See USA Pro Co., Inc., B-220976, supra. Thus, GLC's bid, which is both internally inconsistent with respect to the base and option year prices and not compatible in structure to the other offers, clearly is unbalanced. Id.

The remaining question here is whether GLC's unbalanced bid is materially unbalanced, which involves consideration of the likelihood that acceptance of the bid will result in the lowest overall cost to the government. Howell Constr., Inc., B-225766, supra. Our material unbalancing analysis focuses on various factors, including whether the government reasonably expects to exercise the options; circumstances suggesting that some or all of the options will not be exercised give rise to a reasonable doubt that an unbalanced bid will result in the lowest cost to the government. See Professional Waste Sys., Inc.; Tri-State Servs. of Texas, B-228934, B-228934.2, Nov. 10, 1987, 87-2 CPD ¶ 477.

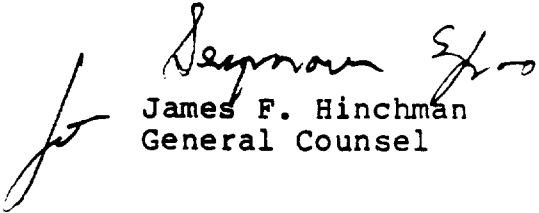
The agency points to funding problems that it believes may preclude option exercise. It reports in this regard that because Congress recently prohibited the use of appropriated funds to support base golf courses, the funding for this contract is being provided by a non-appropriated fund activity (NFA) and there is uncertainty whether the NFA will have funds available for golf course maintenance during the option years. Further, while the agency recognizes the possibility that Congress may change this policy to again allow the use of appropriated funds for golf course maintenance, it points out that since the contract here is with the NFA, the options could not be renewed; rather, a new contract would have to be awarded. In any case, even if there were no funding problems that could prevent the exercise of the options, it remains significant that GLC's bid does not become low until the last option year; we consider this fact alone to cast doubt on whether GLC's unbalanced bid will ultimately provide the lowest overall cost to the Air Force. See Professional Waste Sys., Inc.; Tri-State Servs. of Texas, B-228934, B-228934.2, supra. We

conclude that the contracting officer properly rejected GLC's bid as materially unbalanced.

GLC argues that its low buy-out prices at the end of each year make its bid potentially more beneficial to the government. However, the evaluation of aggregate prices was based on the 5-year lease prices, not the buy-out prices (the base year purchase option prices would have been relevant to the evaluation had the agency decided to purchase the equipment at the outset but the Air Force explains it found the purchase prices were not low enough to make purchase more beneficial than leasing). The fact that a buy-out in the future would be less expensive under GLC's bid therefore is irrelevant; GLC's lease prices violated the unbalancing prohibition in the IFB. The Air Force explains, moreover, that since it does not have the parts or labor to handle major maintenance on the equipment and under the lease option (all major maintenance is performed by the contractor), it is unlikely that the buy-out options would be exercised.

GLC raises a number of additional arguments that we find to be without merit. For example, the protester takes issue with the agency's statement that it likely will not exercise the options since the contracting officer obviously determined, in providing for evaluating the options, that the options would be exercised. As explained above, however, while the Air Force initially may have planned on exercising the options, it ultimately determined that, at best, funding problems created uncertainty in this regard. In fact, the Air Force has informed us that due to the uncertainty of funding, the expenditures under Piedmont's contract may have to be reduced by 50 percent or more and that the Air Force may partially terminate the contract. We find nothing improper in either the agency's initial decision to evaluate options, or its subsequent position that the, options likely would not be exercised.

The protest is denied.



James F. Hinchman
General Counsel